A Socio-Legal Study Relating to Law of Defamation under Indian Laws: Possibilities and Challenges Towards its Decriminalization

Ph.D. Research Plan

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by

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CERTIFICATE

This is to certify that this Ph.D. Research Plan entitled **"A Socio-Legal Study Relating to Law of Defamation under Indian Laws: Possibilities and Challenges Towards its Decriminalization"** by Ms. Manju Dhakad submitted in fulfillment of the requirement for the Degree of Doctor of Philosophy in School of Law under Assistant Professor, Tulika Singh of JECRC University, Jaipur during the academic year 2022, is a bonafide record of work carried out under my guidance and supervision.

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INTRODUCTION

Defamation is a complex legal issue that has been debated for years, and its decriminalization is a deeply contentious topic. While some argue that defamation should remain a criminal offense in order to protect the reputation of individuals and organizations, others argue that freedom of speech and expression should take precedence over such concerns. In a socio-legal context, the decriminalization of defamation would have far-reaching implications for the legal system and society as a whole.

To "defame" someone is to cause harm to their reputation. Defamation comes from the Latin word "diffamare," which means to circulate or transmit information about an individual that could hurt the person's reputation. As a result, damaging someone's reputation is the only meaning of "defamation." In both civil and criminal contexts, defamation is illegal. Defamation is punishable by legislation, but the civil law surrounding it is not enshrined in any specific statutes. The tort law system addresses defamation in civil law, while the criminal law system addresses it in Sections 499-502 of the Indian Penal Code, 1860.

As per **Black's Law Dictionary** defines defamation as the crime of damaging another's good name by the publication of false and malicious claims. It appears that both libel and slander are included in the definition of this term. As a result of the media hysteria around the right to free expression guaranteed by Article 19(1)(a), defamation has emerged as a pressing issue in modern society. People worry about making statements in public or in private that will cause a scandal or get them in trouble with the law.

In legal terms, "defamation" refers to an attack on another's reputation by the dissemination of false information (written communication with an outsider). It's a tough concept, and the only thing limiting the possible varieties is the imagination of humans. While "English law" may be where the concept of criticism first took shape, comparative concepts have been around for a while. The "Roman law" held oppressive drones to the highest standard of criminal liability. Retaliation for insults in early English and German law often involved cutting off the offender's tongue.

Defamation is a serious issue as freedom of speech and expression have both online and offline mode now. With social media it makes easier than ever for false statements to spread rapidly and cause harm to reputations. In India, the law of defamation

is criminalized, but there is a growing movement towards its decriminalization. This socio-legal study explores the possibilities and challenges of such a move, taking into account the need for protecting individuals' reputations while also balancing freedom of speech. The crime was committed because of a breach of the "right to reputation," a subset of the "right to life and liberty" guaranteed by Article 21 of the Indian Constitution.

It is important to understand the social and legal implications of such a move, and whether it would have a positive or negative impact on society. This is particularly relevant in the age of social media, where defamation cases have become more prevalent. In light of these complexities, it is important to carefully consider the possibilities and challenges involved in the decriminalization of defamation under Indian laws.

Criminal Defamation in India:

Criminal defamation in India is defined as a crime under Section 499 of the Indian Penal Code (hence referred to as IPC). Two years in prison, with or without a fine, is possible for violating Section 500 of the Indian Penal Code. Sections 499 and 500 of the Indian Penal Code have been repeatedly challenged by citizens for being unconstitutional.

Decriminalizing of Defamation:

The *de minimis* concept, sometimes known as minimalism, states that criminal punishment should be used only as a last resort when all other options have been exhausted.[1] As this concept emphasises, criminal defamation should not be prosecuted if there is a less restrictive alternative remedy available. The defendant is a defamation dispute who seeks a remedy under tort law that adequately protects the rights of both parties. It is not necessary to make defamation a criminal offence when the victim can seek monetary compensation or a public apology to repair the damage done to his or her reputation. On the other hand, even after doing his time, the accused will not have to face the stigma of being labelled a criminal in the community.

[1]http://jcil.lsyndicate.com/wp-content/uploads/2017/02/DECRIMINALIZATION-OF-DEFAMATION-Astha-Saxena.pdf

There has been a recent shift towards decriminalising defamation on a global scale; however, Indian law provides a unique opportunity to examine the issue.[2] States have been urged by international guardians like the United Nations Special Rapporteur on Freedom of Opinion and Expression to replace criminal defamation laws with more effective civil legislation. The United Kingdom, the original source of the International Criminal Court, removed criminality in its defamation legislation in 2013 and replaced it with a reasonable law. However, the Indian legal system stubbornly clings to both civil and criminal remedies for defamation, to no avail in terms of justice for the defamed. India should follow the rest of the world and try to develop similarly.

Literature Review:

Books:

1. **S.K. Sarvaria, *Universal Law of Defamation and Malicious Prosecution Civil and Criminal,* 14th Edn., Universal Law Publishing, Lucknow 2017:** This book, author has gone through thirteen printings, making it clear that it is the definitive work on the topic. As a social being, man is protective of his reputation and honour, and he reacts strongly to any threat to those two things. In truth, a civilised society can't function without its people being motivated by a sense of honour and reputation in order to fulfil their social duties and responsibilities. Because of its focus on a topic crucial to maintaining human dignity, this book deserves serious consideration for its worth. Everyone in the legal profession, including judges, lawyers, media professionals, editors, journalists, politicians, and authors, should read it.

2. **K.M. Sharma & S.P. Mago, *Ready Referencer On Defamation,* Kamal Publishers, Lawman Series, Latest Edition 2020:** One important factor in defamation cases is determining whether the statement in question is one of fact or opinion. Statements of opinion are generally protected under free speech rights, while statements of fact can be considered defamatory if they are false and harmful.

3. ***Mehrotra's Commentary on Law of Defamation, Damages, Malicious Prosecution*, 8th Edn., Delhi Law House, New Delhi, 2023:** in this book, one

[2]http://www.legaleraonline.com/articles/defamation-in-the-indian-context

important aspect of the law of defamation is the calculation of damages. These damages can include both economic and non-economic harm, such as lost profits or emotional distress. Malicious prosecution is also a potential issue in a defamation case, as an individual may be pursued for making false accusations or initiating legal action with the intent of harming another's reputation. Understanding these nuances of defamation law can be crucial for individuals and businesses in protecting their interests and reputation.

4. ***Black Law Dictionary:*** Defamation is defined here, along with related concepts. It also includes the explanations of relevant terminology and ideas offered by notable legal scholars.

5. **Dr. Ashok Kumar Jain, *Law of Torts*, Ascent Publications, Edn. 2012:** The author of this book provides a legal definition of defamation and explains it in plain English by using a number of case laws. The author has also provided an overview of the numerous libel statutes and case laws that apply in India.

6. **Dr. Avtar Singh, *Introduction to the Law of Torts and Consumer Protection*, 3rd Edn., LexisNexis Butterworths Wadhwa, Nagpur 2013:** The author has defined defamation accurately and offered an explanation of the case laws surrounding defamation in India.

7. **M.N. Shukla, *The Law of Torts*, 7th Edn., Universal Law Publishing Co., New Delhi, 2015:** The author of this book is contributing to the growth of tort law in India. This updated version includes the most up-to-date defamation case laws from India's highest court.

8. **Dr. J.N. Pandey, *Law of Torts*, 20th Edn., Central Law Publications, Allahabad, Reprint 2021:** The present study seeks to include judicial and extra judicial remarks on the cases in a methodical and analytical fashion, making the law pertaining to State's culpability in tort clearer as a result of this book.

9. **Dr. Ratan Lal & Dhirajlal, *The Law of Torts*, 28th Edition, 20th Edn., LexisNexis, Reprint 2022:** Author has made significant progress in constitutional torts. The nine-judge bench of India's Supreme Court has ruled that citizens have a constitutionally protected right to privacy under Article 21 and other provisions of the Constitution.

10. **Henry Campbell Black, Black's Law Dictionary, 4th Ed. 1968:** Defamation, as defined by Black's Law Dictionary, is the crime of damaging another person's good name or reputation via the publication of false information.

Article:

1. **Van Vechten Veeder, "*The History and Theory of the Law of Defamation*", Columbia Law Review, Vol. 3, Issue 8, pp. 546-573:** The author of this piece describes how libel law has developed over time and across jurisdictions.
2. **Ayusshi, *"Critical Analysis of Defamation Laws in India"*, E-Journal Legal Service India:** This study analyses the case law that has developed around discussions of the constitutionality of defamation. Therefore, it gives a comprehensive analysis of the historical context and modern classification of defamation law in India. The article also assesses the validity of both criminal and civil defamation as decided by the Supreme Court in the Subramanian Swamy and R. Rajagopal cases.
3. In the research paper ***The Risks of Defamation: An analysis into the driving factors determining the outcome of commercial defamation cases.*** The author notes that stock prices, consumer loyalty, and access to finance markets are all negatively affected by commercial defamation and harm to reputation. The literature led to the identification of three crucial elements. Twenty actual defamation cases from the past are used to evaluate and analyse the causes. There is evidence in the sample for all three factors, and the research concludes that they all have a significant role in determining the outcome of a business defamation litigation. The results are useful for enhancing policymakers' and enterprises' understanding of commercial defamation and creating effective defamation-defense strategies.
4. **Commercial Defamation and Trade Libel Chicago Business Litigation Lawyers, Chen (2005)** argues that motivating factors are endogenous legislative elements. Company defence strategies are affected by the defamer's political and financial clout, as discussed by **Scileppi (2002), Jackson (2001), Hearit (1996), and Lidsky (2000).** Conversely, Johnson and Gelb (2002) focus on how the development of the internet has altered the legal framework governing commercial defamation. Defamation is first defined, then its components are laid

out. The potential repercussions of commercial defamation are the current focus of the literature review. Finally, it explains what's going on and what can be done about it.

5. **Redlich (1995)** elaborates on the monetary impact of defamation on a public company, arguing that it will result in worse credit ratings or more difficult access to the debt market, so reducing the company's financial potential. It has an impact on commercial connections and can jeopardise future deals, such as a company partner pulling out of a merger or joint venture that was previously suggested.
6. **Lidsky (2000)** claims that false statements might have a negative impact on stock prices since traders base their decisions on them. The economic benefits that a good reputation delivers to a business are emphasised by **De Villiers (2009),** who agrees with Redlich's argument. One of a company's most precious assets is its goodwill, and credibility is a part of it. Increased pricing is possible, and customer and worker retention is ensured **(De Villiers, 2009).** When these benefits are maligned, their significance reduces. Brand value (also known as reputation) has been shown to have a positive effect on stock price in empirical studies by **Barth, Clement, Foster, and Kasznik (1998).** Conversely, lower stock prices are linked to negative credibility, as found by the research of **Karpoff, Lee, and Martin (2008).** They calculate that the reputational cost of financial statement fraud is more than seven times more than the sum of all legal fines imposed on the organisation.

Justification for Selection of Research Area:

Defamation is a complex area of law that poses many challenges for both plaintiff and defendant. It involves balancing the right to free speech against the right to protect one's reputation. Decriminalization of defamation has been a topic of debate in legal circles for many years. It is imperative that lawmakers put in place a system that balances the right to free speech and the protection of an individual's reputation. The concept of decriminalizing defamation is one such measure that has gained traction among legal scholars and advocates of free speech.

In this research work, the researcher will explore historical context, current status, and potential impact of defamation on society as the social media coverage make it more debatable.

Research Objectives:

1. To check the status of age old definition of defamation in present trend of the society's mentality.

2. To verify the adequacy of the law relating to defamation as per changing scenario of the society.

3. To check the effectiveness of the punishment for the offence of defamation for deterrent effect on the public from committing it frequently.

4. To check the effectiveness of defenses available against the offense of defamation.

5. To find out the impact of punishment of defamation on other rules and regulations

Research Methodology:

This study was compiled using a doctrinal research methodology, which necessitated the gathering of secondary data from a wide range of print and digital sources, including books, journals, research papers, online legal databases, bare acts, etc. In order to comprehend laws relating to defamation different statutes have been used to pronounce verdicts in similar instances, numerous judgements and cases have been referred in detail. Important reference works have also been cited for this purpose.

Expected Outcome /Hypothesis:

1. The present laws dealing with the defamation whether civil or criminal is insufficient and ineffective to cope up with the changing scenario of society.

2. To some extent, decriminalization of defamation would be a better solution to over come the existing complications in context of newly emerging definition of the freedom of speech and expression.

Work Plan / Time Lines:

The proposed research plan comprises of five chapters of the following captions:

Chapter-I Introduction

Chapter-II Civil and Criminal Law relating to Defamation

Chapter-III Judicial Trends towards Decriminalization of Defamation

Chapter-IV A Comparative Study of Law Relating to Defamation in U.K., India and Commonwealth Countries

Chapter-V Conclusion and Suggestions